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Doc Code: AP.PRE.REQ

PTO/SB/33 (07-05)

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PRE-APPEAL BRIEF REQUEST FOR REVIEW		Docket Number (Optional) NAI1P063/01.305.01	
<p>I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)]</p> <p>on <u>December 12, 2005</u></p> <p>Signature <u></u></p> <p>Typed or printed name <u>Erica L. Farlow</u></p>		Application Number 10/029,591	Filed 12/21/2001
		First Named Inventor Herbert V. Joiner et al.	
		Art Unit 3639	Examiner Robinson Boyce
<p>Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.</p> <p>This request is being filed with a notice of appeal.</p> <p>The review is requested for the reason(s) stated on the attached sheet(s). Note: No more than five (5) pages may be provided.</p> <p>I am the</p> <p><input type="checkbox"/> applicant/inventor.</p> <p><input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)</p> <p><input checked="" type="checkbox"/> attorney or agent of record. 41,429 Registration number _____</p> <p><input type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34 _____</p> <p>NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.</p> <p><input type="checkbox"/> *Total of _____ forms are submitted.</p>			

Signature  
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12/12/05  
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## REMARKS

The Examiner has rejected Claims 1-8, 25 and 26 under 35 U.S.C. 101 as being directed to non-statutory subject matter. Applicant respectfully disagrees with this rejection, since applicant specifically claims a “method for charging for network analysis, and executing on a computer including a computer readable medium.”

The Examiner has rejected Claims 1-29 under 35 U.S.C. 103(a) as being unpatentable over Wolf et al. (U.S. Patent No. 6,278,694) in view of Turek et al. (U.S. Patent No. 6,021,439). The Examiner has rejected Claims 30-34 under 35 U.S.C. 103(a) as being unpatentable over Wolf in view of Turek, in further view of Furukawa et al. (U.S. Patent No. 6,145,011). Applicant respectfully disagrees with such rejections.

With respect to independent Claims 1, 9, 17 and 25, the Examiner has relied on Col. 3, line 16-Col. 2, line 20 and Figure 1 in Wolf (applicant assumes the Examiner meant Col. 3, line 16-Col. 4, line 20) to make a prior art showing of applicant’s claimed “consolidating the network traffic information utilizing a plurality of host controllers coupled to the agents” (see this or similar, but not identical language in each of the foregoing claims).

Applicant respectfully asserts that Wolf expressly discloses “remote probes P1-P3 [that] transmit their monitoring data to a network manager 20” (see Col. 3, lines 37-39). Clearly, transmitting monitoring data to a single network manager (Figure 1), as in Wolf, does not meet applicant’s specific claim language, namely that “the network traffic information [is consolidated] utilizing a plurality of host controllers coupled to the agents” (emphasis added).

In the latest Office Action dated 10/26/2005, the Examiner has argued that Col. 8, lines 13-14 from Wolf disclose that the network manager produces a traffic report for

the selected address pairs. The Examiner has further argued that the network manager of Wolf contains a memory storage medium that stores three programs (Col. 5, lines 1-7) where the first program controls the polling and processing of polled monitoring data from the probes P1 and P2, while the second program does the same for probe P3. The Examiner has thus concluded that the network manager has a plurality of programs that handle network communications for each probe, thus handling different zones.

Applicant respectfully asserts that Wolf only teaches that the “program X controls polling and processing of polled monitoring data from probes P1 and P2...[and] program Y controls the polling and processing of polled monitoring data from the probe P3” (Col. 5, lines 3-7). Thus, each program only controls polling and processing. Simply nowhere does Wolf teach that the programs “consolidate[e] the network traffic information,” as claimed by applicant (emphasis added).

Still with respect to independent Claims 1, 9, 17 and 25, the Examiner has relied on Col. 3, line 16-Col. 2, line 20; Figure 1; Figure 7a; and Figure 8 in Wolf to make a prior art showing of applicant’s claimed “reporting on the network traffic information to a user utilizing a plurality of zone controllers coupled to the host controllers” (see this or similar, but not identical language in each of the foregoing claims).

Applicant respectfully asserts that the descriptions in Wolf of Figures 7A and 8, as relied on by the Examiner, clearly teach that “the network manager 20 produces a traffic report for the selected address pairs” (see Col. 8, lines 13-14-emphasis added). Applicant asserts that a network manager that reports does not meet applicant’s claimed “reporting...utilizing a plurality of zone controllers” (emphasis added). Thus, it appears that the Examiner has relied on the network manager in Wolf to meet both of applicant’s claimed consolidating and reporting. However, applicant claims utilizing a plurality of host controllers for consolidating and utilizing a plurality of zone controllers for reporting (two separate entities, as claimed).

In the latest Office Action dated 10/26/2005, the Examiner has given the same arguments as those stated above to meet applicant's specific claim language. Applicant again asserts that Wolf only teaches that the "program X controls polling and processing of polled monitoring data from probes P1 and P2...[and] program Y controls the polling and processing of polled monitoring data from the probe P3" (Col. 5, lines 3-7). Thus, each program only controls polling and processing. Simply nowhere does Wolf teach that the programs "[report] on the network traffic information to a user," as claimed by applicant (emphasis added).

Also with respect to independent Claims 1, 9, 17 and 25, the Examiner has relied on the following excerpt from Turek to make a prior art showing of applicant's claimed "determining a reoccurring fee associated with the reporting based on a number of at least one of the agents, the host controllers, and the zone controllers" (see this or similar, but not identical language in each of the foregoing claims).

"In the management server implementation shown in FIG. 7, the server manages the quality-of-service information on behalf of one or more instrumented Web servers, perhaps for a service fee. Alternatively, the management server is used to collect the Q-o-S information on behalf of a set of instrumented Web servers, and a central controller located elsewhere in the network provides analysis (and, if desired, distribution and/or publication, e.g., for a fee) of such data." (Col. 8, lines 38-45)

Applicant respectfully asserts that the above excerpt from Turek relied on by the Examiner merely teaches managing quality-of-service, distribution and/or publication for a service fee. However, generally mentioning a service fee does not even suggest "determining a reoccurring fee" (emphasis added), and especially not where the fee is "associated with the reporting based on a number of at least one of the agents, the host controllers, and the zone controllers," as claimed by applicant. Again, applicant emphasizes that neither Wolf nor Turek teach the utilization of three different entities,

namely agents, host controllers and zone controllers, let alone the aforementioned reoccurring fee which is tailored for such a framework, as claimed by applicant.

In the latest Office Action dated 10/26/2005, the Examiner has relied on Col. 8, lines 38-45 in stating that Turek discloses that “the distribution for a fee occurs on behalf of one or more instrumented Web servers, meaning that these fees reoccur since more than one Web server needs to be accommodated.” In addition, the Examiner has argued that since “the Web server handles the communication in the network, the fee is therefore associated with the agents, the host controller and zone controllers.”

Applicant respectfully asserts that such excerpt only teaches that “the server manages the quality-of-service information on behalf of one or more instrumented Web servers, perhaps for a service fee.” Simply because a fee may be charged for managing information for multiple Web servers (associated with a particular company, for example) does not inherently mean that the fee is reoccurring, as the Examiner seems to contend. Furthermore, Turek discloses that the service fee is for managing the quality-of-service information on behalf of at least one Web server. Simply managing quality-of-service information does not inherently mean that the fee is also “associated with the reporting based on a number of at least one of the agents, the host controllers, and the zone controllers,” as claimed by applicant. In addition, the Examiner contends that the fee is associated with the agents, the host controller and zone controllers. However, it appears that the Examiner has not taken into consideration the full weight of applicant’s claims, since applicant claims that the reoccurring fee is “based on a number of at least one of the agents, the host controllers, and the zone controllers” (emphasis added).

With respect to independent Claims 26 and 28, the Examiner has again relied on Col. 8, lines 38-45 in Turek (as excerpted above) to make a prior art showing of applicant’s claimed “determining a fee associated with the distributed network analysis based on a number of the information collectors” (see this or similar, but not identical

language in each of the foregoing claims). Yet again, applicant respectfully asserts that such excerpt merely teaches managing quality-of-service, distribution and/or publication for a service fee. However, generally mentioning a service fee does not even suggest “determining a fee” (emphasis added), and especially not where the fee is “associated with the distributed network analysis based on a number of the information collectors,” as claimed by applicant.

In the latest Office Action dated 10/26/2005, the Examiner has relied on the same arguments as stated above to meet applicant’s specific claim language. Applicant again respectfully asserts that the Examiner contends that the fee is associated with the agents, the host controller and zone controllers. However, applicant claims that the reoccurring fee is “based on a number of the information collectors” (emphasis added), and not simply associated with the agents, the host controller and zone controllers, as the Examiner contends.

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art and not based on applicant’s disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed.Cir.1991). Applicant respectfully asserts that at least the third element of the *prima facie* case of obviousness has not been met, since the prior art references, when combined, fail to teach or suggest all of the claim limitations, as noted above. A notice of allowance or a specific prior art showing of all of applicant’s claim limitations, in combination with the remaining claim elements, is respectfully requested.